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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,011	04/01/2004	Donna J. Adam	2563-85	1594
22442	7590	03/16/2006	EXAMINER	
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			LAYNO, BENJAMIN	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/817,011

Applicant(s)

ADAM ET AL.

Examiner

Benjamin H. Layno

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's arguments, see amendment, filed 12/30/05, with respect to the rejection(s) of claim(s) 1-29 under 102 and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Perkins and Webb.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 6-9, 17, 18, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of (Webb and Au-Yeung).

The patent to Perkins discloses a method of playing a poker card game. Perkins provides an ante wagering area 16 and a bet wagering area (second bet equal to the ante bet), col. 3, lines 46-48. To play Perkins game, at least a first player makes an ante wager, col. 3, lines 21-22. A dealer deals one community card 18, 20 that is face up, the one community card being the only community card dealt during the playing of the game, col. 3, lines 36-38. The dealer deals a total of five cards that are face down to the first player (original two cards, a third card, a fourth card and a Bonus 6 card), col. 3, line 35 to col. 4, line 27. After the one community card is dealt face up, the first player decides whether or not to continue play, col. 3, lines 43-48. If the first player

decides to fold, the dealer collects the ante wager made by the first player, col. 3, lines 49-52. If the first player decides to continue play, the first player must make a bet wager (second bet equal to the ante bet), col. 3, lines 46-48. The first player may decide to have a total of six cards (five cards dealt to the first player, and the one community card). The first player forms the best possible 5-card poker hand contained within the six cards, col. 4, lines 22-23. Thus, it is inherent that the first player may discard one card from the five cards dealt to him and, if so, use the one community card as a replacement card for the one card that was discarded in order to form the best possible 5-card poker hand. A determination is made related to the first player, see Pay Table, col. 4, lines 50-59.

The patent to Webb teaches that it is known in poker games for a player to compare his hand **against a pay table** "PAIR PLUS" 16, or **alternatively**, compare his hand **against the dealer hand** "ANTE" 18, col. 6, lines 1-18.

The patent to Au-Yeung teaches that it is known in poker games wherein players are dealt cards, and community cards are dealt, **to deal cards to the dealer**, paragraph [0015], in order for the players to play against the dealer. The dealer also decides whether or not to use the community cards as replacement cards for the cards dealt to the dealer, if it forms the best possible 5-card poker hand from the two cards dealt to him and the five community cards, paragraph [0021].

In view of such teaching, it would have been obvious to modify Perkins' game in order for the first player to play against the dealer by including the steps of dealing five cards to the dealer. The dealer would have decided whether or not to use the one

community card as a replacement card for one of the cards dealt to the dealer, if it forms the best possible 5-card poker hand. This modification would have made Perkins game more challenging, thus attracting more experienced poker players.

In regard to claims 8 and 9, Au-Yeung teaches that it is known in poker games wherein the dealer is dealt cards, and players play against a dealer, to require that the dealer have a qualifying hand (at least a pair of fours) in order to continue play and, if not, paying the first player a first predetermined amount based on the ante wager, paragraph [0022].

In view of such teaching, it would have been obvious to further include to Perkins game a requirement that the dealer have a qualifying hand (at least a pair of fours) in order to continue play and, if not, paying the first player a first predetermined amount based on the ante wager. This modification would have given the player the perception of a player advantage, thus making Perkins' game more attractive.

4. Claims 5 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of (Webb and Au-Yueng) as applied to claim 1 above, and further in view of Wirth.

The patent to Wirth teaches that it is known in poker games that have community cards, to provide a discard area for cards that are not used by the players, col. 3, lines 12-16. In view of such teaching it would have been obvious to include a discard area to Perkins' game in order to make the game more organized, less cluttered, and to prevent fraudulent activity.

5. Claims 10-15 and 22-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of (Webb and Au-Yeung) as applied to claim 1 above, and further in view of Moody.

The patent to Moody teaches that it is known in poker games that have community cards, to award a progressive jackpot payout to players whenever certain predetermined card combinations (e.g. all Face Cards, all Face Cards of the same suit, etc.) occur in the group of community cards, col. 11, lines 25-33. In view of such teaching, it would have been obvious to incorporate a community card wagering area to Perkins' game for making a community card wager. Determining how the community card wager is placed (e.g. player decides on his own to make a community card wager independently of any other wager, a predetermined percentage or a predetermined amount of the player's bet is allocated to a jackpot, etc.) is simply a casino business decision, which is always obvious in the art.

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of (Webb and Au-Yeung) as applied to claim 16 above, and further in view of Malcolm.

The patent to Malcolm teaches that it is known in poker games that have community cards to provide a 10's or better wagering area 42 for making 10's or better wager, Fig. 2. When a player makes a 10's or better wager, and the player's hand includes a 10's or better, the player is paid a predetermined amount, col. 6, lines 1-14. In view of such teaching, it would have been obvious to incorporate a 10's or better

wagering area to Perkins' game. This modification would have added another side bet to Perkins' game giving the players the perception of having a better opportunity at winning, thus making Perkins' game more attractive.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1 and 5-32 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: steps directed to the utilizing of cards dealt to the dealer, to define exactly what roll the cards dealt to the dealer play in the method of play. What is the purpose of the cards dealt to the dealer? Claims 22 and 31 recite "dealing by the dealer a number of cards.....face down to the dealer". There is no other recitation in these claims directed to the cards dealt to the dealer. Furthermore, claims 1 and 30 recite "dealing by the dealer a number of cards.....face down to the dealer", and the vague recitation "making determinations related to at least the dealer and the first player". There is no other recitation in these claims directed to the cards dealt to the dealer. Claims 1, 22, 30 and 31 all lack steps of how the cards dealt to the dealer functionally interrelate with all the other steps of the game in order to effectively carry out game play.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571)272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3711

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Benjamin H. Layno
Primary Examiner
Art Unit 3711

bhl